



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

April 22, 1959

Honorable Frank M. Jackson
Executive Secretary
Teacher Retirement System of Texas
Austin, Texas

Opinion No. WW-600

Re: Status of funds accruing to the Teacher Retirement System of Texas for the remainder of the fiscal year ending August 31, 1959, and the availability of such funds to pay administrative costs of the Teacher Retirement System.

Dear Mr. Jackson:

Your request for an opinion submits two (2) questions for our consideration as follows:

"1. Should monies accruing to the respective funds of the Teacher Retirement System, particularly funds accruing to the interest fund thereof, for the remainder of this fiscal year ending August 31, 1959, be deposited in a special trust account in the custody of the State Treasurer or should same be deposited in the State Treasury.

"2. If such funds are properly deposited in the special trust account may any portion of the funds so deposited be used by the System to cover deficiencies in funds appropriated for administrative costs for the remainder of this fiscal year without the necessity of further legislative appropriation. In this connection, the aggregate expended for administrative costs, including appropriated funds plus the supplementary funds from the trust account, would not exceed the total authorized for administrative costs by general statute. (The total of teacher membership fees plus a sum not to exceed

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50¢ per member which may be transferred from the interest fund.)"

Your first question is expressly answered by the final sentence, under "Summary", in Attorney General's Opinion WW-565 (1959), wherein it is stated:

"Funds hereafter accruing to each retirement system should be deposited in such trust account."

Funds collected by the Teacher Retirement System include membership fees, income from investments and matching contributions paid by teacher members. These collections together with any other funds or monies collected by the Teacher Retirement System for the remainder of this fiscal year and thereafter, unless the applicable statutes are amended to provide otherwise, should be placed in the hands of the State Treasurer, as custodian, and not in the Treasury.

Section 10 of Article 2922-1, Vernon's Texas Civil Statutes, provides for the creation of the various funds of the Teacher Retirement System. Included is the Expense Fund from which all expenses of administration and maintenance are directed to be paid. No part of the Expense Fund comes from state tax sources. The fund is made up of the \$2.00 annual membership fee paid by each teacher member with the further provision that if the aggregate of membership fees collected is insufficient to cover expenses of administration, the system's Board of Trustees shall transfer to the Expense Fund from the Interest Fund an amount necessary to cover administrative costs but in no event shall the amount transferred exceed in any one year Fifty Cents (\$.50) per member of record as of August 31 of that year. Hence, it is evident that the Legislature by general statute has placed a definite limit on the funds available to the Teacher Retirement System to cover administrative costs. This limit cannot under any circumstances be exceeded and it is immaterial in so far as this limitation is concerned, whether the funds expended come from the Treasury or from the trust account in the hands of the Treasurer as Custodian.

As we have pointed out, monies properly collected for the credit of the Expense Fund and Interest Fund, as well as other funds of the Retirement System, for the remainder of this fiscal year should not be deposited in the State Treasury but should be placed in a special trust account in the

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hands of the State Treasurer. The funds so deposited may be expended to supplement present legislative appropriations for administrative costs of the Retirement System for the remainder of this fiscal year without the necessity of legislative appropriation. This conclusion must follow since Section 6 of Article VIII of the Constitution of Texas, merely requires that funds deposited in the Treasury cannot be expended or drawn from the Treasury without specific appropriation. This provision of the Constitution, by its clear terms, applies only to funds within the Treasury and not to funds outside the Treasury. The expenditure of such funds, however, is governed by the restrictions set out above. This means that the total costs of administration and maintenance of the Retirement System for this fiscal year must not exceed the aggregate of membership fees standing to the credit of the Expense Fund plus the transfer of a sum from the Interest Fund to the Expense Fund not to exceed Fifty Cents (\$.50) per member of record as of August 31, 1959. Your request points out that these limits will not be exceeded.

Your second question, therefore, is answered in the affirmative.

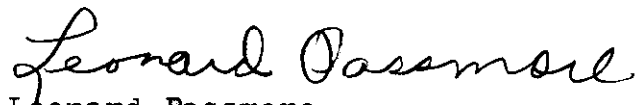
SUMMARY

Monies accruing to the respective funds of the Teacher Retirement System for the remainder of this fiscal year and thereafter, unless the applicable statutes are amended to provide otherwise, should be deposited outside the Treasury in a special trust account with the State Treasurer as Custodian.

The funds so deposited may be used by the Board of Trustees of the Teacher Retirement System, within the limits described, to supplement current legislative appropriations for costs of administration and maintenance.

Yours very truly,

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Attorney General of Texas

By 
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APPROVED:

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